

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	2:05-cr-109
v.)	
)	
WADDY J. MOSES, JR.,)	
)	
Defendants.)	
)	
)	
)	

MEMORANDUM ORDER

Pending before the Court is a MOTION TO REDUCE SENTENCE PER 18 U.S.C. § 3582, § 1B1.10(a) filed pro se by Defendant Waddy J. Moses, Jr. (Document No. 158). The government has filed a response (Document No. 159), and the matter is ripe for decision.

On December 13, 2005, Defendant pled guilty to counts 1 and 8 of the indictment at Crim. No. 05-109, which charged him with conspiracy to possess with intent to distribute and to distribute five (5) grams or more of crack and less than five hundred (500) grams of cocaine, in violation of 21 U.S.C. § 846, and possession with intent to distribute and distribution of five (5) grams or more of crack, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(b)(iii). In the government's opinion, Moses did not provide substantial assistance, and therefore, neither a motion for downward departure pursuant to USSG § 5K1.1 nor Fed. R. Crim. P. 35 was filed. On July 14, 2006, Defendant was sentenced to a term of imprisonment of sixty (60) months at each of counts 1 and 8, to be served concurrently.

Defendant correctly notes that in the 2007 amendments to the United States Sentencing

Guidelines, the base offense levels involving crack cocaine offenses have been lowered, and that the reduction applies retroactively. Defendant seeks a sentence reduction in light of the “new understanding” of the crack cocaine convictions. Pursuant to 18 U.S.C. § 3582(c)(2):

in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

The amendments to the Sentencing Guidelines do not affect Defendant’s term of imprisonment. Moses was not sentenced based on an advisory guidelines range, but rather, was sentenced to the statutory mandatory minimum sentence. *See* 21 U.S.C. § 841(b)(1)(b)(iii) (for violations involving 5 grams or more of crack cocaine, “such person shall be sentenced to a term of imprisonment which may not be less than 5 years”). Regardless of the recent amendments to the Sentencing Guidelines, the Court is without authority to impose a sentence on Moses of less than 5 years (which equates to 60 months.) *See* USSG § 5G1.1(b): “Where a statutorily required minimum sentence is greater than the maximum of the applicable guideline range, the statutorily required minimum sentence shall be the guideline sentence.” *See also* USSG § 5G1.1(c) (confirming that a sentence imposed under the Guidelines may not be “less than any statutorily required minimum sentence.”); USSG § 1B1.10 Application Note 1(A) (reduction in term of imprisonment is not authorized if the amendment does not lower the applicable guideline range because of a statutory mandatory minimum term of imprisonment). The limited instances in which the Court may depart below the statutory minimum (e.g., the “safety valve” provisions in USSG § 5C1.2 and “substantial assistance” motions pursuant to USSG § 5K1.1 and Fed. R.

Crim. P. 35), are not applicable to Moses. Accordingly, the MOTION TO REDUCE SENTENCE PER 18 U.S.C. § 3582, § 1B1.10(a) filed by Defendant Waddy J. Moses, Jr. (Document No. 158) is **DENIED**.

SO ORDERED this 5th day of March, 2008.

BY THE COURT:

s/ Terrence F. McVerry
United States District Court Judge

cc: Al Burke, AUSA
Email: almon.burke@usdoj.gov

Charles M. Schwartz, Esquire
Email: CMSCHW@AOL.COM

Waddy J. Moses, Jr.
FCI Morgantown, Box 1000
Morgantown, WV 26507-1000
(By US Mail)